

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

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**CONSOLIDATED APPLICATION FOR REVIEW OF THE CEI ORDERS
OF THE INMATE CALLING SERVICE PROVIDERS COALITION**

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SUMMARY

Section 276 defines "payphone service" to mean the "provision of public or semi-public pay telephones, the provision of inmate telephone *service* in correctional institutions, and any ancillary services." 47 U.S.C. § 276(d) (emphasis added). Thus, according to the express language of the statute, a BOC may not subsidize or discriminate in favor of its inmate calling *services* any more than its inmate calling *equipment*. In other words, if Section 276 is to have any meaning, the nonregulated ICS must be defined to include the call control and call processing functions associated with inmate calling described above regardless of how or where those functions are being provided.

While the BOC CEI plans were reasonably clear with respect to inmate call control functions, they were confusing and, in many cases, incorrect with respect to inmate collect call processing functions. Of all the BOCs, Bell Atlantic took the most extreme position. Even though Bell Atlantic uses nonregulated dedicated ICS equipment to perform the collect call processing for inmate calls, Bell Atlantic nevertheless treats the calling service as part of its regulated operator services, separate and apart from its nonregulated ICS operation.

The CEI Orders fail to require the BOCs to adequately describe how they are providing their ICS and on what terms their nonregulated ICS operations are buying inmate call control and call processing functions from the BOCs' regulated network operations. The CEI Orders are not sufficiently clear that all equipment issued to provide ICS must be deregulated, regardless of whether it is located in or out of the BOC's

network. Worse, the orders permit the BOCs to essentially to continue to provide inmate collect calling as a regulated service, contrary to Section 276. The Commission must therefore review and revise each of the CEI Orders to require the BOCs to clarify and, where necessary, correct their treatment of their ICS.

The single most critical error in the CEI Orders is how the Bureau treats the provision of inmate collect calling service. Having established that ICS *equipment* must be provided on a nonregulated basis, the orders then go on to say that the BOCs will not be required to "provide collect calling as a nonregulated *service* when used with inmate phones."¹ Not only is this self-contradictory; it also makes no sense given the centrality of collect calling to the provision of ICS.

Moreover, this treatment of inmate collect calling flies directly in the face of Section 276. If a BOC's nonregulated ICS operation is not assuming the responsibility and risk associated with collect calling service, then its ICS operation is still benefiting impermissibly from subsidies and discrimination by the BOC's regulated operations. Further, by allowing the BOCs to continue to provide vaguely-defined "inmate collect calling services" within their network without requiring the BOCs to detail how they are providing those services and making them available to independent ICS providers on the same terms and conditions, the CEI Orders fail to require the BOCs to comply with their obligation to make their regulated network service offerings available for resale.

¹ See, e.g., Bell Atlantic CEI Order, ¶ 81 (emphasis added). Each of the other orders contains identical language.

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Pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Inmate Calling Service Providers Coalition ("ICSPC")¹ hereby applies for review of the April 15, 1997 orders of the Common Carrier Bureau ("Bureau") on the Comparably Efficient Interconnection ("CEI") Plans of Ameritech,² Bell Atlantic Telephone Companies

¹ ICSPC is an ad hoc coalition of companies that provide highly specialized telephone equipment and services to inmates in confinement facilities. ICSPC's members range in size from the nation's largest independent providers of inmate calling services to small companies serving only a handful of confinement facilities. They share in common the desire to offer the highest possible level of service to confinement facilities and inmate callers at rates that are fair while providing a reasonable return on investment.

² Ameritech's Plan to Provide Comparably Efficient Interconnection to Providers of Pay Telephone Services, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-790, Released April 15, 1997 (CCB) ("Ameritech CEI Order").

("Bell Atlantic"),³ BellSouth Corporation ("BellSouth"),⁴ NYNEX Telephone Companies ("NYNEX"),⁵ Pacific Bell and Nevada Bell (jointly, "PacTel"),⁶ Southwestern Bell Telephone Company ("SWBT"),⁷ and U S West, Inc. ("U S West")⁸ (collectively, the "CEI Orders").

³ Bell Atlantic Telephone Companies' Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Services, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-791, Released April 15, 1997 (CCB) ("Bell Atlantic CEI Order").

⁴ BellSouth Corporation's Offer of Comparably Efficient Interconnection to Payphone Service Providers, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-792, Released April 15, 1997 (CCB) ("BellSouth CEI Order").

⁵ The NYNEX Telephone Companies' Offer of Comparably Efficient Interconnection to Payphone Service Providers, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-793, Released April 15, 1997 (CCB) ("NYNEX CEI Order").

⁶ Pacific Bell and Nevada Bell Comparably Efficient Interconnection Plan for the Provision of Basic Telephone Service, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-794, Released April 15, 1997 (CCB) ("PacTel CEI Order").

⁷ Southwestern Bell Telephone Company's Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Services, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-795, Released April 15, 1997 (CCB) ("SWBT CEI Order").

⁸ U S West's Comparably Efficient Interconnection Plan for Payphone Services, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-796, Released April 15, 1997 (CCB) ("U S West CEI Order").

Each of the CEI Orders suffers from the same basic infirmity with respect to inmate calling services ("ICS"): the failure to correctly define ICS to include the provision of "inmate telephone *service*," as opposed to the mere provision of equipment, as required by Section 276 of the Communications Act of 1934, as amended, 47 U.S.C. § 276(d) (emphasis added). As a consequence of this failure to correctly and coherently define ICS, the Bureau was unable to properly evaluate the BOC CEI plans to determine the manner in which the BOCs support their ICS and, consequently, whether the BOCs are making such support available to independent ICS providers on a nondiscriminatory basis. In addition, the Bureau affirmatively approved several BOCs' CEI plans despite clear evidence that these BOCs were providing ICS in violation of Section 276. Review of the Bureau's action is therefore appropriate under Section 1.115(b)(2)(i) of the Commission's rules

I. BACKGROUND

A. ICS Is a Unique Service Consisting of Specialized Inmate Call Control and Call Processing Functions Offered in an Integrated Package in Conjunction With the Provision of Inmate Collect Calling

As ICSPC has explained in its comments in this proceeding and elsewhere, the ICS environment is quite different from the regular public payphone environment. Some of the distinctive characteristics of the ICS environment can be summarized briefly as follows.⁹ First, coin payphones are not provided for inmate use.¹⁰ Almost all inmate calling

⁹ A more detailed discussion of the special characteristics of ICS was included in ICSPC's comments in CC Docket No. 96-128, and is hereby incorporated by reference. The relevant portion of those comments is attached hereto as Attachment 1.

is provided on a collect calling basis. Thus, collect calling and the processing of those collect calls¹¹ is clearly integral to ICS.¹²

Second, inmate calling systems are designed to provide confinement facilities with an extensive series of call control mechanisms over inmate calling. Those call control functions are designed to prevent abuses such as the harassment of witnesses and jurors and to reduce the level of fraudulent inmate calling.

Third, given the nature of the inmate environment, there is necessarily an integral relationship between the inmate call control functions and the processing of inmate calls. For example, the call processing system is usually configured so that calls never default to a live operator unless the operator is specially trained and dedicated to handling inmate calls. Further, in order to minimize bad debt (see below), information received in the course of billing and collecting inmate calls should be available so that the call control and call processing components can use such information as appropriate to implement additional restrictions on inmate calling.

(Footnote continued)

¹⁰ While inmate phones may outwardly resemble coin payphones, the functionality provided is completely different.

¹¹ Inmate collect call processing includes validating the called number; completing the call to the called party; querying the called party as to whether they wish to accept a collect call from an inmate in a confinement facility; making the voice connection if the answer is yes; and generating a call record for billing purposes.

¹² At an absolute minimum, there is no question that collect calling is "ancillary" to ICS and is thus included within the definition of "payphone service" in the ICS context. See 47 U.S.C. § 276(d).

Fourth, bad debt is substantially higher for inmate calling than for ordinary collect calling. Without an effective call control and call processing system, bad debt is likely to reach such extreme levels as to preclude the profitable operation of an inmate calling service. Therefore, if subsidies and discrimination in favor of BOC ICS operations are to be eliminated, as Section 276 requires, the BOCs' ICS must be defined in such a way that the nonregulated entity has responsibility for the costs of network services and the losses associated with uncollectible calls. Otherwise, the BOCs' costs associated with bad debt from ICS will continue to be subsidized by other regulated services, and the BOCs' ICS will be favored with discriminatory treatment, in violation of Section 276(a)(2).¹³

B. Section 276 Requires That All of the Components of ICS Service Be Provided on a Nonregulated Basis, Free From All Subsidies, Regardless of Where the Functionality is Located

Section 276 defines "payphone service" to mean the "provision of public or semi-public pay telephones, the provision of inmate telephone *service* in correctional institutions, and any ancillary services." 47 U.S.C. § 276(d) (emphasis added). Thus, according to the express language of the statute, a BOC may not subsidize or discriminate in favor of its inmate calling *services* any more than its inmate calling *equipment*. In other words, if Section 276 is to have any meaning, the nonregulated ICS must be defined to include the call control and call processing functions associated with inmate calling described above regardless of how or where those functions are being provided.

¹³ 47 U.S.C. § 276(a)(2).

If the inmate call control and call processing functions are provided by a BOC through dedicated ICS equipment separate from the BOC's regulated network operator service functions, then the equipment clearly must be treated as deregulated. This is the case regardless of whether the equipment is located on the premises of a confinement facility or in a BOC central office.¹⁴ If, on the other hand, the call control and call processing functions are provided in the BOC's regulated network, *i.e.* through regulated operator service facilities, then those functions *must* be provided as a tariffed service to the BOC's ICS operation so that it can be resold as part of the nonregulated ICS. Moreover, if the ICS functions are being provided to the BOC's nonregulated ICS operations from the regulated network side, the BOC must make those same services available to independent ICS providers on a nondiscriminatory basis.

C. The BOC CEI Plans and Other BOC Submissions Indicated That the BOCs Are Providing ICS Improperly Or Failed to Make Clear How the BOCs Are Providing ICS

The BOC CEI plans provided virtually no explanation of how and where they are providing inmate call control and call processing. More fundamentally, the plans did not even indicate whether the BOCs considered call control and call processing functions to be part of their ICS operations that Section 276 requires them to provide on a nonregulated basis.

¹⁴ Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, Declaratory Ruling, 11 FCC Rcd 7362, 7373 (1996).

Eventually, prompted by ICSPC and other commenters, the BOCs did provide some detail in their reply comments and *ex parte* filings regarding their provision of ICS functions. All of the BOCs appeared to concede that inmate call control functions are part of their nonregulated ICS operations. Most indicated they were not (at least in the future) going to provide dedicated call control equipment in the network, and those that did intend to use dedicated ICS equipment in the network said they would define the equipment as nonregulated.¹⁵

With respect to call processing functions, however, the BOCs took varying positions. SWBT and BellSouth stated that they would provide call processing in dedicated non-network equipment and would treat it as part of their nonregulated ICS services.¹⁶ Ameritech and NYNEX, however, stated that they would provide call processing in their regulated operator service facilities.¹⁷ They claimed that because their call processing functions is not performed in equipment dedicated to ICS, Section 276 does not prohibit them from continuing to provide inmate call processing as part of a regulated operator

¹⁵ See, e.g., PacTel CEI plan at 11; Bell Atlantic Reply Comments at 12 ("Equipment used for inmate call restriction, PIN identification, and related security controls are dedicated to specific correctional facilities and has been classified as deregulated premises equipment"); U S WEST Reply Comments at 22 ("call control equipment uniquely associated with inmate calling services that provides timely PIN, and other call-control functions" is being treated as deregulated "and is not collocated in U S WEST's central office"); Ameritech Reply Comments at 3-4

¹⁶ See SWBT Reply Comments at 17 (SWBT); Letter from Ben Almond, Executive Director - Federal Regulatory, to William Caton, Acting Secretary, Federal Communications Commission (April 7, 1997), at 1 (BellSouth).

¹⁷ See Ameritech Reply Comments at 4; NYNEX Reply Comments at 16.

service, separate and apart from their nonregulated "inmate telephone service" operations. Thus, Ameritech and NYNEX did not propose to provide their network-based call processing functions under tariff to their nonregulated ICS operations, to be resold as part of the nonregulated service. Instead, those BOCs contended that even though Section 276 requires ICS to be deregulated, they are nonetheless free to provide the inmate collect call processing, that, as explained above, is integral to ICS as a regulated service offering. PacTel and U S West CEI simply failed to disclose whether they define the provision of collect calling as part of nonregulated ICS, or even whether or not their nonregulated ICS operations rely upon network facilities to process collect calls.¹⁸

Of all the BOCs, Bell Atlantic took the most extreme position. Bell Atlantic's reply comments indicated that, like Ameritech and NYNEX, Bell Atlantic considered the provision of collect calling service to inmates to be part of its regulated operator service.¹⁹ However, it eventually emerged -- months after Bell Atlantic originally filed its CEI plan -- that, *unlike* Ameritech and NYNEX, in 80% of its inmate facilities, Bell Atlantic does *not* provide inmate call processing functions in the network. Instead, according to Bell Atlantic's March 24, 1997 *ex parte*:

Bell Atlantic, in most of its inmate facilities, uses the store and forward [of providing ICS processing] method by contracting with a third party that processes calls for both Bell Atlantic and the presubscribed IXC using equipment owned by the vendor. The vendor charges fees to both Bell Atlantic and the IXC for its services and delivers the

¹⁸ See BellSouth Reply Comments at 21; PacTel Reply Comments at 36.

¹⁹ Bell Atlantic Reply at 12.

message detail to each for billing purposes and these calls are billed in the same manner and at the same rates as collect calls generally.²⁰

In other words, every aspect of Bell Atlantic's inmate calling service, including all call processing functions, is provided in non-network ("third party vendor") equipment dedicated to ICS. However, even though the *only* role played by Bell Atlantic's regulated network operations is the physical transmission of the call as a 1+ direct-dialed call,²¹ Bell Atlantic nevertheless treats the inmate collect calling service as part of its regulated operator services, separate and apart from its nonregulated ICS operation. According to Bell Atlantic, "the call processing in these instances has been viewed as adjunct to Bell Atlantic's operator services."²²

II. DISCUSSION

The CEL Orders fail to require the BOCs to adequately describe how they are providing their ICS and on what terms their nonregulated ICS operations are buying inmate call control and call processing functions from the BOCs' regulated network operations. Worse, the orders permit the BOCs to essentially continue to provide inmate collect calling as a regulated service, contrary to Section 276. The Commission must

²⁰ Letter from Marie Breslin, Director - FCC Relations, to William Caton, Acting Secretary, Federal Communications Commission (Mar. 24, 1997) ("March 24 Letter").

²¹ Since all of the processing is done in dedicated ICS CPE using the store-and-forward method, the call goes to the network as a 1+ call. See Chart attached to Bell Atlantic's March 24 Letter. A copy of that chart is attached hereto as Attachment 2.

²² *Id.*

therefore review and revise each of the CEI Orders to require the BOCs to clarify and, where necessary, correct their treatment of ICS.

A. The Bureau Correctly Ruled That Equipment Dedicated to Inmate Call Processing and/or Call Control Must Be Deregulated, But Failed to Require the BOCs to Comply With That Ruling

In five of the seven CEI Orders, the Commission correctly ruled that all equipment dedicated to the provision of inmate calling must be defined as part of the BOCs' unregulated ICS operations, whether or not the equipment is CPE. For example, in the Bell Atlantic CEI Order, the Commission states that "any call processing and call control equipment related to Bell Atlantic's provision of ICS must be reclassified as nonregulated, regardless of whether that equipment is located at a customer premises or a Bell Atlantic central office."²³

The Bureau, however, failed, in at least one instance, to require the BOCs to comply with that ruling. The Bureau stated that "it appears that Bell Atlantic has [reclassified all its dedicated ICS equipment as nonregulated]."²⁴ But, Bell Atlantic clearly stated that third party vendor dedicated ICS equipment was being leased to Bell Atlantic's

²³ Bell Atlantic CEI Order, ¶ 81. The BellSouth, NYNEX, PacTel, and SWBT orders contain the same language. This language, however, does not appear in either the Ameritech CEI Order or the U S West CEI Order. Presumably, what the Commission believes to be included in the BOCs' deregulated ICS operations does not vary from BOC to BOC, but the Commission must make this clear.

²⁴ Bell Atlantic CEI Order, ¶ 81.

regulated operations.²⁵ Thus, the nonregulated equipment was illegally reinserted into Bell Atlantic's revenue requirement for regulated services.

This reinsertion of nonregulated equipment into a regulated service is a violation of the Commission's CEI principles because, under those principles, the nonregulated side should be purchasing regulated functionality under tariff, not the reverse. Bell Atlantic's ICS operation should be charged by Bell Atlantic's regulated operation for network lines, usage, validation, etc. If Bell Atlantic's ICS operation is *not* being charged, then those functions must also be made available at no cost to independent ICS providers.

B. The CEI Orders Are in Error in That They Fail to Prevent the BOCs From Providing Inmate Collect Calling as a Regulated Service

The single most critical error in the CEI Orders is how the Bureau treats the provision of inmate collect calling service. Having established that ICS *equipment* must be provided on a nonregulated basis, the orders then go on to say that the BOCs will not be required to "provide collect calling as a nonregulated *service* when used with inmate phones."²⁶ Not only is this self-contradictory; it also makes no sense given the centrality of collect calling to the provision of ICS. In most facilities with which ICSPC members are

²⁵ According to Bell Atlantic, the third party vendor is paid a fee for the use of the equipment. Thus, it appears that Bell Atlantic's regulated side pays, directly or indirectly, for the call processing equipment, the network usage, the validation of the call, and the billing and collection of the collect call charges. See Letter from Marie Breslin, Director - FCC Relations, to William Caton, Acting Secretary, Federal Communications Commission (Mar. 24, 1997).

²⁶ See, e.g., Bell Atlantic CEI Order, ¶ 81 (emphasis added). Each of the other orders contains identical language.

familiar, *only* collect calling is allowed by inmates because of the security concerns posed by other, less-controlled forms of calling. It makes no more sense to define ICS exclusive of the provision of inmate collect calling service than it would to define general payphone service exclusive of coin calling, yet the Bureau has done exactly that.

The result is that Bureau's determination that all ICS equipment must be nonregulated is rendered meaningless. Essentially, the BOCs are free to send inmate collect calls, after they have gone through call control and call processing performed on nonregulated ICS equipment, to the BOCs' regulated operations and thereby convert the call to a regulated collect call.

This treatment of inmate collect calling flies directly in the face of Section 276. Section 276 directs the Commission to put into place nonstructural safeguards to ensure that the BOCs can no longer continue their historical practices of subsidizing their own ICS operations with revenue from regulated operations and of discriminating against independent ICS providers.²⁷ Congress clearly intended that the BOCs' ICS operations be cut-off from all subsidies from regulated revenues, so that the ICS operations would no longer be insulated from market forces and would be forced to compete on a level playing field with independent ICS providers.

If a BOC's nonregulated ICS operation is not assuming the responsibility and risk associated with collect calling service, then its ICS operation is still benefiting impermissibly from subsidies and discrimination by the BOC's regulated operations. This

²⁷ 47 U.S.C. § 276(b)(1)(C).

is the case because, inter alia, as discussed above, one of the critical differences between ICS and ordinary operator services is the high proportion of "bad debt" associated with ICS due to fraudulent or otherwise uncollectible calls. Even with the sophisticated controls in place in the inmate environment, bad debt from ICS far exceeds bad debt from other operator services as a percentage of billed revenue. The BOCs historically have not segregated bad debt associated with ICS from bad debt associated with ordinary operator services. Thus, the BOCs have been able to effectively use revenues from other services to subsidize the costs associated with their bad debt from ICS.²⁸ The CEI Orders will allow the BOCs to continue to define ICS collect calling and the associated costs of bad debt as part of regulated service, and to continue subsidizing their ICS, contrary to Section 276.²⁹

Further, by allowing the BOCs to continue to provide vaguely-defined "inmate collect calling services" within their network without requiring the BOCs to detail how they are providing those services and making them available to independent ICS providers on the same terms and conditions, the CEI Orders fail to require the BOCs to comply with

²⁸ These costs include all costs associated with processing and carrying an uncollectible call, including validation, automated collect processing, transmission, and billing expenses. Since the revenue for the call is not collected, all the associated costs must be recovered from other revenues.

²⁹ In the CEI Orders, the Bureau brushes this concern aside, saying that the "treatment of uncollectibles will be addressed in the review of [each BOC's] CAM." The issue, however, was not in fact addressed in the Bureau's consolidated order approving the BOCs' CAMs (among others'). That order, totaling three paragraphs, summarily approved all of the CAMs without providing any analysis whatsoever. See Cost Allocation Manual Changes Required by Payphone Deregulation, Order, DA 97-814, released April 15, 1997. In any case, as discussed in the text following this note, the issue is properly one for resolution in the context of CEI.

their obligation to make their regulated network service offerings available for resale. In this regard, the Bureau is simply wrong when it says that since operator services are regulated services which must be offered on a nondiscriminatory, tariffed basis, the BOC CEI plans are not deficient because of their failure to address whether the BOCs "consider[] operator services to be part of [their] deregulated payphone service."³⁰ If the BOCs are not required to detail what is deregulated and what is not, independent ICS providers have no way of knowing what network support services are available to them if they wish to use them.

1. Inmate Collect Calling Cannot Be Defined as "Regulated" When Call Processing is Performed in Deregulated, Non-Network Equipment

The clearest example of Bureau error is its finding that, as in the case of Bell Atlantic, a BOC may define its inmate collect calling as regulated even though all of the collect call processing is performed in dedicated non-network ICS equipment.

Allowing a BOC to provide regulated service over nonregulated equipment renders absolutely meaningless the equipment's nonregulated status. If the service is defined as regulated, all revenue produced is regulated revenue. This will allow a continuation of the subsidies prohibited by Section 276.

³⁰ See, e.g., Bell Atlantic CEI Order, ¶ 73. Identical language appears in each of the other orders.

2. Inmate Collect Calling Service May Not Be Defined as "Regulated" Even When Call Processing is Performed in Network Operator Facilities

To the extent that the BOCs provide any inmate collect call processing functions in the regulated network, the Bureau erred in not requiring those functions to be provided to the BOCs' ICS operations on a tariffed basis (as, for example, network-based coin control functions are provided to BOC's payphone operation) for resale as part of the BOC's nonregulated ICS. Unless this is the case, the real provider of ICS is the BOC's regulated service operations, not its ICS operation.

Moreover, under Computer III, when basic functions are used to support enhanced services, the basic services provided to the enhanced service provider ("ESP") must be provided under tariff to the ESP to be resold as part of the enhanced service. This is the approach the Commission followed with respect to general payphone service. There, network coin functions are defined as part of the BOCs' regulated operator service facilities. However, when these facilities are used to support local calling of BOC payphones, the local calling is still treated as part of the BOCs' nonregulated payphone service.

C. The CEI Orders Must Be Reviewed and Revised By the Commission to Require Each of the BOCs to Clarify and, Where Necessary, Correct Their Treatment of Their ICS

The Commission must review and revise each of the CEI Orders along the lines discussed above. The orders fall generally into four categories. In the first is Bell Atlantic, which presents the most egregious example of abuse of Section 276 and the Commission's CEI policies. Bell Atlantic unabashedly admits to treating its inmate collect calling as a

regulated service notwithstanding the fact that all the call processing functionality is provided through dedicated ICS equipment that Bell Atlantic concedes is nonregulated. The second category is Ameritech and NYNEX. They have also said that their inmate collect calling will be handled by their regulated network operations, and will be treated as a regulated service. The third category is PacTel and U S West, who have not made clear how they intend to treat inmate collect calling. In the fourth category is SWBT and BellSouth. They appear to be treating inmate collect calling correctly as a nonregulated service, but the Commission must nevertheless revise the SWBT and BellSouth orders to make clear that they are *required* to do so.

1. Bell Atlantic

In light of Bell Atlantic's acknowledgment that its regulated side impermissibly assumes the risk and responsibility associated with Bell Atlantic's ICS, the Commission must reject Bell Atlantic's CEI Plan. Bell Atlantic must be required to refile its plan after modifying its ICS operations so that collect calling is provided by its nonregulated side. If Bell Atlantic wishes operator facilities to handle its inmate collect calls, Bell Atlantic must file tariffs that make those functions available to its nonregulated ICS operation and to independent ICS providers on a nondiscriminatory basis for resale as part of their nonregulated ICS.³¹ The tariffs must provide that Bell Atlantic's ICS provider is responsible for paying transmission, call processing, billing and validation charges.

³¹ Bell Atlantic appears to believe that there would be some inherent contradiction if, as a result of reselling network services, Bell Atlantic's "deregulated" ICS operation became subject to some type of state or federal regulation as a carrier or operator service
(Footnote continued)

2. Ameritech and NYNEX

Like Bell Atlantic, Ameritech and NYNEX have also said that their collect calls will be "handed off" from their nonregulated ICS operations to their network-based operator facilities, and will be "handled" by those network facilities the same as regulated operator service calls. However, Ameritech and NYNEX do *not* clarify whether these network operator functions will then be resold pursuant to tariff by their nonregulated ICS operations -- as is required in comparable circumstances under Computer III -- or whether the regulated operator service will be treated as a separate service from deregulated ICS, with the deregulated ICS operation perhaps receiving a commission payment from the Bell company's regulated operator service revenues.

Ameritech seems to say that the relationship with ICS will be treated, from an accounting perspective, as if the nonregulated ICS operation were reselling network

(Footnote continued)

provider. Section 276 requires that subsidies and discrimination be eliminated from a Bell company's provision of ICS. However, Section 276 does not require that a Bell company's ICS or payphone operations be completely relieved of regulation as a carrier when they engage in carriage. Payphone service providers for example, still resell long distance service and may be required to refile tariffs for that service. One of the measures to implement those requirements is "deregulation," in the sense of accounting separation of ICS and other payphone operations from regulated local exchange operations. "Deregulation" in this sense does not necessarily preclude forms of "regulation" that are consistent with such accounting separation, such as rate ceilings that many states impose on operator service rates. Such intrastate rate ceilings are frequently imposed on all operator service providers doing business in a state, including inmate calling service providers. Just as BellSouth's "nonregulated" subsidiary, BellSouth Public Communications, may be subject to regulation as a payphone service provider or operator service provider, so other local exchange carriers' "deregulated" payphone and ICS operations may be subject to such regulation, as long as the separation necessary to prevent subsidies and discrimination is preserved.

operator services purchased under tariff,³² but Ameritech never identifies a tariff under which such network operator services are offered to ICS providers so that they can be made available on the same basis to independent ICS providers. Accordingly, the Commission should require Ameritech and NYNEX to refile their CEI plans under the same conditions as Bell Atlantic.

3. PacTel and U S West

The PacTel and U S West CEI plans and supplemental comments failed to disclose whether they define the provision of collect calling as part of nonregulated ICS, or even whether or not their nonregulated ICS operations rely upon network facilities to process collect calls. PacTel states only that "'call control and call processing functions' can be part of the unregulated ICS service"³³ but avoids saying whether collect call processing is or is not defined by PacTel as part of its unregulated ICS.

U S WEST's is vaguer still. U S WEST provides no explanation at all as to how it defines ICS collect calling. Regarding operator services generally, U S WEST states:

U S WEST's intraLATA operator services offered in connection with [U S West' payphone division's] payphones is part of US WEST's regulated operations. The manner in which U S WEST is accounting for its payphone operations ensures that it is not subsidizing its payphone operations in the provision of operator services.³⁴

³² See Ameritech Reply Comments at 5.

³³ PacTel Reply Comments at 36.

³⁴ U S West Reply Comments at 28.

PacTel and U S West thus must be required to amend their CEI plans to clarify whether their regulated operator services handle any calls from their ICS operations, and if so, to make those operator functions available to their ICS and independent ICS providers on a nondiscriminatory basis, as discussed above.

4. SWBT and BellSouth

Of the seven BOCs, only SWBT and Bell South appear to be defining the provision of inmate collect calling service correctly, as part of their non-regulated ICS operation. SWBT states that:

SWBT's payphone operations do not use any network-based call control and call processing functions. Thus, SWBT will not offer such services to other providers, and SWBT's CEI plan so indicates. Call control and call processing functions are provided by hardware and software owned and operated exclusively by SWBT's payphone operations. This equipment is not housed in SWBT central offices but rather in space owned or leased solely by SWBT payphone operations.³⁵

Similarly, in an April 7, 1997 *ex parte* letter, BellSouth states that:

[BellSouth's payphone division] will use Customer Premises Equipment to provide call control and call processing functioning for its ICS. This functionality is considered a provisioning element of the nonregulated CPE and not part of the network elements that [BellSouth's payphone division] will obtain from its LEC affiliate, BellSouth Telecommunications, Inc. These network elements are available under BellSouth's General Subscriber Services Tariff to [BellSouth's payphone division] and to any other non affiliated payphone service provider.³⁶

³⁵ SWBT Reply Comments at 17.

³⁶ Letter from Ben Almond, Executive Director - Federal Regulatory, to William Caton, Acting Secretary, Federal Communications Commission (April 7, 1997), at 1.

That BellSouth intends to provide its ICS as nonregulated service is further confirmed by an earlier *ex parte* letter in which BellSouth states that "Billing and Collection functions will be performed through an industry clearinghouse; not the LEC. [BellSouth's payphone division] will be at risk for fraud and uncollectibles as any other independent inmate service provider."³⁷

It thus appears that both SWBT and BellSouth are implementing their ICS correctly. However, since the SWBT CEI Order and the BellSouth CEI Order contain the same language with respect to inmate collect calling as the other orders, there is nothing to prevent SWBT and BellSouth from reversing themselves at will and beginning to provide their inmate service as a regulated service, as Bell Atlantic, Ameritech, and NYNEX have said they are doing. Accordingly, the Commission must revise the SWBT and BellSouth orders along the same lines as discussed above with respect to the other orders.

³⁷ Attachment to Letter from Ben Almond, Executive Director - Federal Regulatory, to William Caton, Acting Secretary, Federal Communications Commission (March 21, 1997).